IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5442 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARHARISHNAKAR H JOSHI

Versus

CHAMPAVATI WD/O B P DESAI

Appearance:

MR GR SHAIKH for Petitioner

MR JITENDRA M PATEL for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/02/2002

ORAL JUDGEMENT

This writ petition arises from the claim made by the petitioner of being a tenant in the lands, Block Nos. 6, 36, 339 & 57 admeasuring 3 Acres-27 Gunthas, 0-Acre 12 Gunthas, 3 Acres-25 Gunthas and 0-Acre 16 Gunthas

respectively situated at village Badodara, Taluka-Hansot, District-Bharuch. The petitioner had filed Tenancy case No. 17 of 1973 before the Mahalkari, Hansot under section 70 (b) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act']. The petitioner claimed tenancy in the above referred lands [hereinafter referred to as, `the lands']. It was the case of the petitioner that the petitioner had been inducted as tenant in the said lands and he was cultivating the said lands for a long time. He used to give share-crop to the landlady - the respondent herein. He also paid ganot to the respondent, however, no receipts were issued for the same. He, therefore, prayed that he be declared as a tenant in the said lands. The petitioner's claim was contested by the landlady, the respondent herein. She filed her written statement and denied that the petitioner was tenant in the said lands. She stated that the petitioner was given the power of attorney to act on behalf of the landlady and to manage the said lands. The petitioner was getting the said lands cultivated through some other persons. The petitioner, however, failed to account for the crop-share received by him on behalf of the landlady. The said power of attorney was, therefore, cancelled. The Mahalkari Hansot, under his order dated 5th September, 1973, allowed the claim of the petitioner and declared that the petitioner was tenant in the said lands. Feeling aggrieved, the respondent preferred Tenancy Appeal No. 62 of 1973 before the Deputy Collector, Bharuch which was dismissed on 22nd May, 1974. The challenge to the said order before the Gujarat Revenue Tribunal in Revision Application No. 617 of 1974 was partly accepted ie., the Tribunal under its order dated 10th June, 1975 set-aside the above referred orders of the authorities below and remanded the matter to the Mahalkari, Hansot for fresh inquiry under section 70 (b) of the Act. After the remand, the Mamlatdar & ALT under his order dated 18th March, 1977 held that petitioner was not a tenant in the said lands. The said order was confirmed on 11th December, 1979 by the Prant Officer, Bharuch in Tenancy Appeal No. 54 of 1977. The challenge to the said order before the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A 145 of 1980 partly succeeded in as much as the Tribunal under its judgment and order dated 28th April, 1981 held that the Deputy Collector had given succinct finding dismissing the appeal. The approach of the Deputy Collector was not legal and proper. The Deputy Collector ought to have discussed the entire evidence oral as well as documentary. The Tribunal, therefore, set-aside the above referred order dated 11th December, 1979 of the

Deputy Collector and remanded the appeal to the Deputy Collector for hearing and decision afresh. After the said remand, the Prant Officer, Bharuch under his order dated 26th February, 1982 confirmed the order dated 18th March, 1977 of the Mamlatdar & ALT, Hansot. Feeling aggrieved, the petitioner preferred Revision Application No.TEN:BA: 898 of 1982 before the Gujarat Revenue Tribunal. The Tribunal under its judgment and order dated 20th June, 1986 dismissed the said revision application. Since then the petitioner preferred Review Application No. TEN:CA: 37 of 1986 before the said Tribunal which too was dismissed on 17th March, 1989. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Shaikh has submitted that the learned Tribunal as well as the authorities below have failed to appreciate the evidence; oral as well as documentary, on record. He has submitted that the petitioner had produced umpteen number of documents to prove his possession of the land in question since the year 1965. However, the said documents have not been considered at all. He has further submitted that the petitioner had produced certain correspondence between him and the landlady and her son. The said correspondence clearly indicates that petitioner used to give crop share to the landlady and her son. However, the said evidence has totally been ignored. Further, undue importance has been given to the power of attorney given to the petitioner in the year 1971 which was immediately revoked within a few months thereafter. Merely because the petitioner was given the power of attorney, he did not cease to be the tenant of the said lands which right had otherwise accrued to the petitioner on account of his being inducted as tenant in the said lands. Mr. Shaikh has relied upon the findings recorded by the Mahalkari Hansot under his order dated 5th December, 1973 and by the Prant Officer, Bharuch under his order dated 22nd May, 1974. He has also read over the entire evidence of the petitioner, the constituted attorney of the respondent i.e., evidence of one Babubhai Nagindas Desai and of the landlady, the respondent herein and also of the son of the respondent. Mr. Shaikh has submitted that the petitioner had produced several documents which are referred to in his evidence. The said documents were proved and were admitted in evidence. If the said documents were read in proper perspective, the same would establish that petitioner had been inducted as tenant in the said lands since the year 1965 and that he had been cultivating the said lands continuously since then. He has, therefore, submitted that the orders of the learned

Tribunal as well as the authorities below deserve to be quashed and set-aside and the application made by the petitioner under section 70 (b) of the Act should be allowed. In support of his contention, Mr. Shaikh has relied upon the judgment of this Court in the matter of Thakor Keshaji Ranaji [Decd.] by his Heirs & Legal Representatives Thakore Lilaji Kesaji vs. Vallabhdas Parshottamdas Parikh [1996 (3) GLR 849]

The petition is contested by the learned advocate Mr. Jitendra Patel. He has submitted that the learned Tribunal and both the authorities below have recorded a concurrent finding against the petitioner. This Court, exercising its supervisory jurisdiction under Art. 227 of the Constitution should not interfere with the said finding of fact and shall not substitute its own finding. He has also submitted that the petitioner in his cross examination has admitted that that the petitioner owns some 16 acres of land on which he cultivates cotton, juwar, wheat, etc.. It, therefore, cannot be said that the cotton sold to the multipurpose society was grown on the said lands. He has submitted that the only reliance placed by the petitioner is on the correspondence between the petitioner and the respondent, during the subsistence of the power of attorney. The said letters have been duly considered by the Tribunal and the authorities below and have been correctly appreciated. The said letters do not tend to show that the petitioner was a tenant in the said lands. He has further submitted that the petitioner has not produced any material evidence i.e., the revenue entries or the receipts for payment of revenue assessment or payment of ganot or the accounts for the expenses incurred by him or for the share in the crop allegedly given to the respondent which could establish that the petitioner was the tenant in the said lands. In absence of any evidence on the record, the learned Tribunal and the authorities below have rightly rejected the application made by the petitioner under section 70 (b) of the Act.

I have perused the orders made by the Tribunal and the authorities below and the evidence read over by Mr. Shaikh. It is not right to say that the authorities below and the Tribunal have not considered the evidence produced on the records of the matter. The entire evidence has been considered and appreciated, including the correspondence relied upon and produced by the petitioners. It is the categorical finding of the Tribunal as well as the authorities below that the petitioner has failed to establish his possession/is cultivating the lands since the year 1965, as alleged.

The petitioner was the constituted attorney of the respondent landlady and he used to manage the said lands and get them cultivated through other individuals. I am unable to agree with Mr. Shaikh that since the petitioner had been put into possession lawfully, the said possession was as a tenant and the petitioner ought to have been declared tenant in the said lands. In the matter of Thakore Kesaji Ramaji [Supra], the landlord had admitted lawful possession of the applicant/petitioner as a servant. That the applicant was being remunerated by giving him share in the crop. In that view of the matter, the learned Judge was pleased to hold that, `even assuming that the case of the respondent-owner is correct, then also, the admission that the deceased was sharing crop, the produce out of cultivation of the lands in question, is, `ipso facto' sufficient to hold that the deceased was a deemed tenant under section 4 of the Act. No doubt, it is found without any hesitation from the evidence of the petitioners that there was a relationship of landlord and the tenant .... Nokar-nama alleged to have been executed in 1955 cannot be said to be the real design and instrument of the agreement of service. A person who is in lawful possession much prior to execution of the Nokar-nama had no reason to execute such agreement of service.' Thus, the above judgment can be distinguished on facts. In the present case, the petitioner has failed to establish his possession of the said lands since 1965, as alleged. The respondent has proved that the petitioner was the constituted attorney under the power given to the petitioner. The petitioner was collecting crop share on behalf of the respondent. In view of the concurrent finding recorded by the Tribunal and the authorities below, there is no scope for holding the petitioner to be a tenant on the said lands, as alleged. Hence, the petition is dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*